Appendix "A"

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CENTRAL DIST. OF CALIF.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EDDIE DASSIN, INC., a California Corporation,

Plaintiff,

vs.

EASTERN AIR LINES, INC., a Corporation,

Defendant.

NO. 71-1825-DWW

MEMORANDUM OPINION

Eddie Dassin, Inc. is a California corporation located in Los Angeles which designs and furnishes knitwear to wholesalers. Much of the merchandise is made in the Orient under plaintiff's direction. In July, 1970, plaintiff contracted to sell knits to Darlene Knitwear Company located in Puerto Rico and then undertook to ship the goods to the consignee by using the services of a custom broker, an agent of Eastern Air Lines. One shipment was delivered by plaintiff to the broker on October 23, 1970 (represented by Airway Bill, No. 007 0312 8366, Exhibit No. 1) and the other on the same day (represented by Airway Bill 007 0312 8370, Exhibit No. 2). Plaintiff placed a value of $30,480.00 on the first shipment and $18,642.50 on the second, but paid only the basic transportation charges and did not offer to pay the additional 10¢ per $100 valuation

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which would have provided it with insurance to the full valuation. Mr. Dassin now contends that he would have p the extra amount had he been told of its benefit and tha it was the duty of defendant's agents to explain this to him. It is to be noted that plaintiff has been in this business for 20 years and has initiated shipments of thi type over these years.

Both shipments reached Puerto Rico on a collec air freight charge basis. The Airway Bill on the first shipment became lost and was not found until December 18 1970, and when the consignee was then notified of the arrival, it refused the goods indicating that they were intended for the Christmas market and that it was too la to sell the merchandise. Defendant continues to hold th freight because plaintiff refused to receive the return it. The whereabouts of the second shipment is somewhat a mystery. Defendant contends it delivered the goods to Puerto Rico, notified Darlene Knitwear of its arrival an turned the merchandise over to Darlene's agent who signe receipt for it and paid the freight charges of $1062.26. Plaintiff contends it received a letter from Darlene to effect that it never received these goods and it continu to refuse to pay for its value.

These shipments are governed by Tariff Rules as filed and published with the Civil Aeronautics Board defendant Eastern Air Lines, Inc. Section 1373 of the Federal Aviation Act requires each carrier to file with the Civil Aeronautics Board and to print and keep open t public inspection tariffs showing all rates, fares and charges for air transportation, and showing all classifi cations, rules, regulations, practices and services in connection with such transportation. Upon the filing of

the tariffs with the Civil Aeronautics Board, the tariffs become a part of the contract of carriage between the parties. Tishman and Lipi., Inc. v. Delta Air Lines, 275 F.Supp. 471 (S.D.N.Y. 1967); Schiff v. Emery Air Freight Corporation, 332 F.Supp. 1057 (Mass. 1971). Rule 52 of the Air Tariff Conference indicates that this shipment shall have a declared value of 50¢ per pound unless a higher value is declared on the air bill at the time of the receipt of the shipment from the shipper. If a higher value is declared, an additional transportation charge is exacted in the amount of 10¢ for each $100 by which such higher value exceeds 50¢ per pound, or $50.00, whichever is higher.

As to the first cause of action, the shipment valued by plaintiff at $30,480.00, plaintiff is bound by the limitations of liability set forth in the Air Tariff Conference of America, Rule No. 32 and Rule No. 52 and defendant's liability shall be in an amount equal to the value of the goods, not to exceed 50¢ per pound. The evidence shows that defendant continues to hold the goods listed in Exhibit 5 in its Salvage Center. As an alternative to receiving payment for the goods in plaintiff's first claim at the rate of 50¢ per pound, the plaintiff may elect to forego the payment at the limited rate and receive the return of said goods, the same to be delivered to plaintiff at the expense of defendant. Plaintiff is to give notice of this election to defendant not later than January 15, 1973 and if plaintiff makes such election, defendant shall return the merchandise prepaid to plaintiff prior to February 1, 1973.

Defendant contends it delivered the merchandise

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mentioned in plaintiff's second cause of action to the consignee and holds a document showing its receipt by a person whose identity has not been proven as being an agent of the consignee. The fact of the delivery is somewhat bolstered by defendant's cash sheet of date November 9, 1970 (Exhibit B) which shows that defendant was paid the amount of its delivery charges ($1062.26) by someone. As stated before, the consignee denies having received the goods and refuses payment of its value. These goods therefore must be considered missing and defendant shall pay plaintiff for same in an amount equal to the value of the goods, not to exceed 50¢ per pound.

Defendant shall prepare proposed findings of fact and conclusions of law and file same not later than January 15, 1973.

DATED: This 26th day of December, 1972.

David W. Wille

DAVID W. WILLIAMS,
United States District Judge